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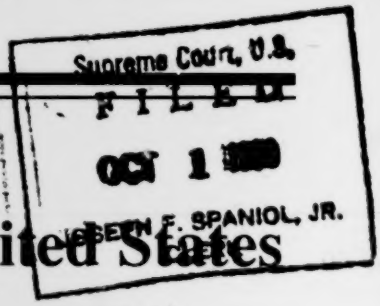

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

BOBBY MITCHELL WEDLOCK

Petitioner,

v.

STATE OF MARYLAND

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

ALAN HILLIARD LEGUM
COUNSEL FOR PETITIONER
208 Duke of Gloucester Street
Annapolis, Maryland 21401
(301) 263-3001

I. QUESTIONS PRESENTED

A. Did the seizure by a State Agent of evidence from Petitioner's trash, which was placed outside near his apartment door in an opaque plastic bag subject to his recall until the time of its collection, violate Petitioner's Fourth Amendment rights as made applicable to the States through the Fourteenth Amendment?

B. When evidence is seized by State Agents acting outside the scope of their authority, is such evidence subject to the Exclusionary Rule and suppressible on that basis?

II. PARTIES TO THE PROCEEDING

FOR PETITIONER:

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(301) 263-3001

FOR RESPONDENT:

J. Joseph Curan, Jr.
Attorney General for the
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IV. AUTHORITIES

1. Mapp v. Ohio, 367 U.S. 643, S. Ct. 1684, 6 L.Ed.2d 1081 (1961).

2. California v. Greenwood, 486 U.S. 35, 100 L.Ed.2d 30 108 S. Ct. 1625 (1988).

V. OPINIONS OF OTHER COURTS IN THIS CASE

Bobby Mitchell Wedlock v. State of Maryland, Maryland Court of Special Appeals, unreported opinion, No. 980, September Term, 1989, filed 2/26/90.

Bobby Mitchell Wedlock v. State of Maryland, Maryland Court of Appeals, Petition No. 93, September Term, 1990, cert denied, 6/29/90.

VI. GROUNDS FOR UNITED STATES SUPREME COURT JURISDICTION

Petitioner seeks a Writ of Certiorari to the Maryland Court of

Appeals Order dated June 29, 1990, denying his Petition for Writ of Certiorari to the Maryland Court of Special Appeals. Jurisdiction to review said Order is conferred by 28 U.S. C. A. §1257(a), inasmuch as the Maryland Court of Appeals is the State's highest court and the Order therefrom impinges on Petitioner's rights under the United States Constitution.

VII. PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

MARYLAND ANNOTATED CODE

ARTICLE 38A

§ 8. Powers and duties.

(a) Enforcement of laws. -- The State Fire Marshall shall enforce all laws of the State having to do with:

(1) Prevention of fire.

(2) The storage, sale, and use of any explosive, combustible, or other dangerous article, in solid, liquid, or gas form.

(3) The installation and maintenance of equipment of all sorts intended for fire control, detection, and extinguishment.

(4) The means and adequacy of exit, in case of fire, from buildings and all

other places in which persons work, live, or congregate from time to time for any purpose, except buildings used wholly as dwelling houses containing no more than two families.

(5) The suppression of arson.

(f) Investigations. -- The State Fire Marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the State. The State Fire Marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provision of this article, to enter upon and examine any building or premises where any fires or attempt to cause fires shall have occurred, or which at the time may be burning, and

also the power to enter upon at any time any building adjacent to that in which the fire or attempt to cause fires occurred, should he deem it necessary in the proper discharge of his duties; and he may, in the exercise of his discretion, take full control and custody of the said building and premises, and place such person in charge thereof as he may deem proper, until his examination and investigation shall be completed.

(g) Testimony and arrests. -- (1) The State Fire Marshal, in making this inspection or investigation, may, when in his judgment necessary, take the testimony on oath of all person supposed to be cognizant of any facts, or to have the means of knowledge in relation to the matter herein required

to be examined and inquired into, and to cause the testimony to be reduced to writing; and when, in his judgment, the examination discloses that the fire or explosion or attempt to cause a fire or explosion was of incendiary origin, the State Fire Marshal may arrest the supposed incendiary or cause him to be arrested and charged with the crime; and shall transmit a copy of the testimony so taken to the State's Attorney for the county or city wherein the fire or explosion or attempt to cause a fire or explosion occurred.

(2) If, upon investigation, the State Fire Marshal has probable cause to believe that a person has committed or has attempted to commit a crime involving a fire, fire bombing, or false alarm, or involving the

possession or manufacture of explosive devices or substances, fireworks, or fire bombs, the State Fire Marshal may arrest that person or cause him to be arrested and charged with the crime, in accordance with the appropriate procedures provided by law.

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. STATEMENT OF THE CASE

1. This case originated from the Circuit Court for Charles County, Maryland (Nalley, J.) as State of Maryland v. Bobby Mitchell Wedlock, Cr. No. 88-508.

2. Petitioner was found guilty of the crime of perjury in the Circuit Court for Charles County, Maryland, after trial by jury on April 6, 1989 and April 10, 1989. The jury returned its verdict on April 10, 1989.

3. Petitioner was sentenced on June 6, 1989, to the custody of the Commissioner of the Division of Corrections, State of Maryland, for a term of one year and one day. The judgement and sentence of the Circuit Court adjudicated all claims in the action in their entirety.

4. Petitioner noted a timely appeal to the Court of Special Appeals of Maryland, which case was styled as Bobby Mitchell Wedlock v. State of Maryland, September Term, 1989, No. 980. A per curiam, unreported opinion affirming the judgement of the Circuit Court was filed February 26, 1990. A copy of that opinion appears in the appendix as Exhibit B.

5. The mandate of the Court of Special Appeals in the case above-referenced was entered March 28, 1990.

6. On April 12, 1990, Petitioner submitted a Petition for Writ of Certiorari to the Maryland Court of Special Appeals to the Maryland Court of Appeals. The Petition was styled Bobby Mitchell Wedlock v. State of Maryland, Maryland Court of Appeals,

Petition Docket No. 93, September Term, 1990.

7. On June 29, 1990, the Maryland Court of Appeals filed an Order denying Petitioner's Petition for Writ of Certiorari to the Maryland Court of Special Appeals in the above-referenced Petition. This Order appears in the appendix as Exhibit C.

8. The facts material to the consideration of the questions presented are as follows:

On May 19, 1988, in the Circuit Court for Charles County, Maryland, the divorce case of Harry Theodore Johnson, Plaintiff/Counter-Defendant vs. Dorothy Theresa Johnson, Defendant/Counter-Plaintiff, Case No. CV 87-353, came on for hearing on the merits before the Honorable Richard J. Clark, Associate

Judge. Adultery was asserted as a ground for divorce by both parties. Appellant Wedlock was called as a witness by both parties, and gave testimony for both.

As a result of testimony given in this case, Wedlock was charged with perjury. His criminal trial came on for hearing on the merits before a jury on April 6, 1989 and carried over a second day to April 10, 1989.

Prior to trial on the merits, Wedlock moved to suppress evidence which had been seized by Deputy Fire Marshall Charles E. Dammann during the course of his investigation of Appellant for perjury under color of the authority of his office. (Transcript of Circuit Court proceedings, pp. 1-4 through 1-38.)

As defense counsel stated at the beginning of the Motions Hearing: "Basically, the Motion request two things, the suppression of any and all evidence obtained as a result of investigations and actions taken by members of the State Fire Marshall, in general, that is No. 1, and then very specifically, No. 2, any evidence seized from a trash container located at Mr. Wedlock's office [sic] by officers of the State Fire Marshall's Office in June of 1988." (Cir. Ct. Tr. pp. 1-4 through 1-5).

Wedlock's grounds for suppressing the trash evidence -- which consisted of a few pieces of mail and a prescription, all bearing the name and/or address of Ms. Dorothy Johnson, some with dates preceding Wedlock's

testimony at Johnson's divorce trial -- was that said seizure violated Wedlock's Fourth Amendment rights as made applicable to the State of Maryland through the Fourteenth Amendment to the United States Constitution, Mapp v. Ohio, 367 U.S. 643, S.Ct. 1684, 6 L.Ed. 2d. 1081 (1961). Deputy Fire Marshall Dammon testified at the suppression hearing that on two occasions, June 2, 1988, and June 13, 1988, he removed an opaque green plastic trash bag, tied at the top, from the lawn of Wedlock's residence at 805 Hatteras Circle, Waldorf. Dammann testified that at the front of 805 Hatteras Circle, there was a curb, then a sidewalk, then a grassy strip approximately ten feet deep which led to the apartment door. Dammann

stated that the plastic bags to be removed from that location were situated in the grassy strip between the sidewalk and the apartment door. Dammann further testified that, once he removed the bags, on both occasions he took them to a dumpster in the rear of the apartment complex where he examined their contents.

Wedlock testified at the motion hearing also. He stated that he usually dropped his plastic trash bags just at the stoop of his front steps, near his door. He testified that it is his custom to place the trash outside in the morning, within one hour of pick-up time. He testified that the grassy area was part of the premises he leased as 805 Hatteras Circle. He also stated that no one had permission to go

through his trash bags, and that he would not expect anyone to do so. Further, Wedlock testified that there had been occasions when he had had to retrieve something from the trash after he had placed it outside.

Wedlock also moved in his Motion to Suppress that evidence gathered by a deputy fire marshall for presentation against him at his perjury trial was improperly seized and should therefore not be received. At the beginning of the suppression hearing defense counsel proceeded by way of proffer, and moved for suppression of the testimony of all witnesses who had initially been interviewed as part of the investigation in this case by Deputy Fire Marshall Charles G. Dammann. The basis of this prong of his Motion to

Suppress was that Dammann, in conducting an investigation into the possible filing of perjury charges against Wedlock, was acting outside the scope of the authority vested in him by Maryland Annotated Code Article 38 A, dealing with the Fire Prevention Commission and Fire Marshall, but was acting nonetheless as a state agent, and therefore, any evidence collected by him should be suppressed.

Dammann, testifying at the suppression motion, admitted to filing a report of his investigation into the Bobby Wedlock matter on June 30, 1988. At a later time, Defense Counsel says: " I would submit as proffered evidence on behalf of defendant, the report of investigation filed by Deputy Fire Marshall C. E. Dammann on June 30,

1988. Subject of Investigation: Bobby Wedlock - Perjury, on which Mr. Dammann recites going out to the residence and seizing the trash bags as he has testified here today." (Cir. Ct. Tr. p. 1-31.)

Thus, Wedlock effectively moved for suppression of all testimonial and documentary evidence seized or gathered as a direct result of this investigation of the Office of the State Fire Marshall.

Petitioner Wedlock preserved the Constitutional arguments presented for review in this writ by way of his Motion to Suppress at the Circuit Court level. Petitioner presented the Constitutional questions relating the trash search and the evidence seized by agents of the Department of the State

Fire Marshall acting outside their authority to both the Maryland Court of Special Appeals on direct appeal and to the Maryland Court of Appeals in his Petition for Writ of Certiorari thereto. Petitioner has thus preserved these Constitutional issues for review by this Court.

IX. WHY A WRIT SHOULD ISSUE

Petitioner submits that the State Court in this matter decided an important Constitutional question in a way that conflicts with the applicable decision of the United States Supreme Court, so that the considerations set forth in the U. S. Supreme Court Rule 10.1(c), 28 U.S.C.A., are implicated.

Specifically, the Circuit Court ruled that the propriety of the trash search in the instant case was to be

determined with reference to California v. Greenwood, 486 U.S. _____, 100 L.Ed.2d 30, 108 S.Ct. 1625 (1988). Petitioner disagrees.

In Greenwood, police seized trash from a trash truck only after the garbage container in question had been picked up for collection by sanitation workers. In the instant case, Appellant's trash was seized while it was no more than ten feet from his front door, directly by a state investigator. Appellant, during this motion to suppress, stated that he had, on occasion, gone back to retrieve something from his trash after he had placed it outside for collection. It is Petitioner's position, therefore, that in keeping his trash close to his door until collection, Petitioner

exercised sufficient control over his trash to impart upon it the protection of the U.S. Constitution's Fourth Amendment as made applicable to the States through the 14th Amendment. Petitioner contends that this factual differentiation takes Petitioner's case outside of the parameters of the Greenwood holding, as Petitioner was still asserting some measure of control over his trash at the time it was seized. Therefore, the case raises important Constitutional questions that are appropriate for review by this Court.

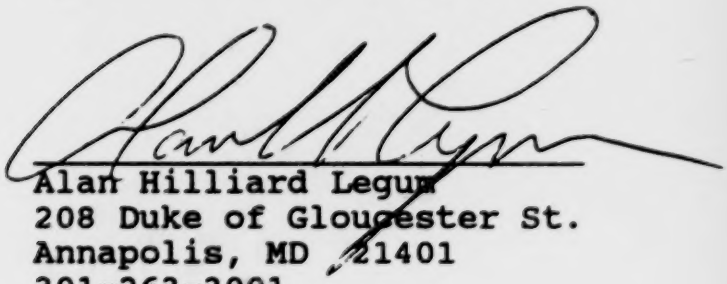
Further, Petitioner submits that the issues herein raise important Constitutional questions which have not heretofore been addressed by this Court, also making review appropriate

under U.S. Supreme Court Rule 10.1(c). Specifically, the issue of whether or not evidence seized by a State Agent acting outside the scope of his authority should be subject to the Exclusionary Rule has profound ramifications, and yet Petitioner knows of no Supreme Court decision which has considered this point. Should State Agents be permitted to violate the privacy of private citizens, so that the fruits of any searches or seizures generated thereby are immune from Constitutional protection on a theory that, so long as the agents were acting outside the scope of their authority, they were acting as private citizens, and thus the Fourth Amendment is not implicated? Or should State Agents be deterred from such activity through the

imposition of the Exclusionary Rule? This issue is one which the Court should pursue, so that guidance can be provided to the State and Federal Courts.

Respectfully submitted,

ALAN HILLIARD LEGUM, P.A.

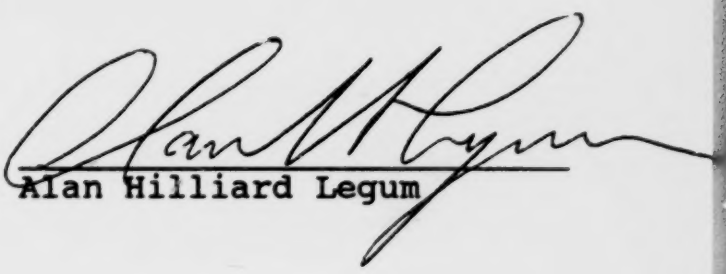


Alan Hilliard Legum
208 Duke of Gloucester St.
Annapolis, MD 21401
301-263-3001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 1990, a copy of the foregoing Petition was mailed first class, postage prepaid to J. Joseph Curran, Attorney General of Maryland; and to Ann N. Bosse, Assistant Attorney

General, Office of the Attorney General, Criminal Appeals Division, 200 St. Paul Place, Baltimore, MD 21202.



Alan Hilliard Legum

X. APPENDIX

Exhibit A.

CIRCUIT COURT FOR CHARLES COUNTY, MARYLAND
RULING FROM THE BENCH ON MOTION TO SUPPRESS

THE COURT: First of all, I had already ruled with regard to paragraph one, concluding that the mere fact that the fire marshall's investigators may not have had statutory or other authority to undertake the project, doesn't necessarily render the fruits of the project unlawful.

With regard to the products of the trash survey, there is, Mr. Walter, a case, the opinion in which disturbs me a little bit applied to this situation, something called Stevenson, Court of Special Appeals, 43 Md. App., 120 (1979) where a couple of D.C. police officers, who did not have authority to

function in Maryland, nonetheless were involved in an investigation and came up with some evidence which the state of Maryland wanted to use in its prosecution and the Court of Special Appeals took the position, since they didn't have authority, they were acting as private citizens and the stuff was admissible.

It goes without saying, if Mr. Dammann was not connected to the Fire Department's Office and worked for Maryland National Bank, you are not talking about a state action and we wouldn't be arguing this.

I think it is prudent for purposes of this case and probably would have been prudent in the Stevenson case, to assume these folks, Mr. Dammann, was operating in his capacity as a law

enforcement officer and that it was governmental action of some sort, quasi official, if not official, and or, put another way, had he not been connected with a state office, it wouldn't have happened, and it is in that context I am considering it.

Of course, the classic abandonment case was, I don't remember the name of it, I should -- it was one involving the seizure of a feces from a toilet in a public restaurant. This is before they started talking about expectation of privacy, a question of whether he relinquished any proprietary interest in what was seized, and they said, yes.

Mr. Wedlock has testified that he put the sack, plastic bag here, wherever he put it, whether it was adjacent to the door stoop or adjacent

to the curb, there, with the expectation the trash truck would come along and pick it up. He did not expect to have more to do with it. Obviously, he didn't expect Mr. Dammann or you or I to come by and steal it, but I suspect that had you or I, or, for that matter, Mr. Dammann come along and picked it up and taken it to the landfill, and done no more with it, that Mr. Wedlock wouldn't have minded. That is the sense of what Mr. Wedlock just told us, and I am sure that, I am satisfied, that was the expectation of everybody else on the block when they put their stuff out either adjacent to the curb or adjacent to the door step, where Mr. Dammann saw them.

To the extent that there remained some proprietary interest and some

expectation that only the trash company would deal with the material, I am satisfied that had Mr. Dammann altered his course of action slightly, he testified, you recall, again, whether it was before or after 6:30, that he was dealing with or seizing or snatching Mr. Wedlock's trash, the trash truck was on the next street over, it was in the neighborhood, it was trash collection day and Mr. Dammann could have, rather than grabbing the bag himself, walking away with it, he could easily have waited until the trash man picked it up and put it on the back of the truck, and then either taken the bag from the truck or opened it right there and inspected it, and clearly, at that point, Mr. Wedlock would have had no

expectation that the contents of that bag would not be available to you or me or Mr. Dammann or anybody else.

The discovery, therefore, of the contents of that bag was inevitable. If there had been less proximity in time and distance to the removal of the trash bag by the truck I would have a problem here with a state agent going in and helping himself to a trash bag that theoretically, at least, the homeowner might not be finished with. Let's say the trash bags were out there two or three days before the truck was coming along, it would be a little more difficult to say that the discovery was inevitable. The neighborhood dogs could have taken it away by that time, but we are not reaching that.

I am satisfied that on the facts of

this situation, that Mr. Dammann was going to discover what was in that bag whether he took it at the instant he did or waited until the trash man took it and then he, Dammann, opened it. Clearly, anybody could have gone into it, at that time. By that time, it is in the same posture as the feces in the toilet.

So the motion to suppress is denied.

Exhibit B.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 980

September Term, 1989

BOBBY MITCHELL WEDLOCK
v.
STATE OF MARYLAND

Wilner
Bishop
Bloom,

JJ.

PER CURIAM

Filed: February 26, 1990

Appellant was found guilty by a jury in the Circuit Court for Charles County of perjury, for which he was sentenced to prison for a year and a day. In this appeal, he makes three complaints:

(1) The trial court should have granted his Motion for Judgment or Acquittal based on insufficient evidence;

(2) The court improperly denied his motion to suppress evidence seized from his garbage; and

(3) He was the victim of selective prosecution.

We are not persuaded by appellant's arguments.

In May, 1988 Judge Richard J. Clark presided at a hearing in the matter of Harry Theodore Johnson v. Dorothy Theresa Johnson. The Johnsons were seeking a divorce, each alleging the other's adultery. Appellant testified

for each party.

At the divorce hearing, counsel for Mr. Johnson questioned appellant extensively about his relationship with Mrs. Johnson. Appellant testified that he met her in November, 1985 in his official capacity as an investigator for the Maryland State Fire Marshal's Office. He was investigating a suspected arson at the Big Bird Club, which was co-owned by the Johnsons. He stated that he interviewed Mrs. Johnson during the investigation and did not see her again until November, 1986, when he performed a safety inspection of the club. He saw both Mr. and Mrs. Johnson again in February, 1987, when two of his brothers were interested in leasing the club.

Appellant testified that in the

summer of 1987 he saw Mrs. Johnson again when she responded to an advertisement he had placed in a couple of grocery stores offering to sublet a room in his townhouse. He said that he never was involved romantically with her and denied that they went to dances together and that they shared the same bedroom. He did acknowledge that Mrs. Johnson had sublet a room from him for 45 days. He stated that they dined together only once -- for lunch at a local restaurant. Appellant testified that at the time of trial -- May, 1988 -- he was engaged to be married to Felicity Archer, whom he dated during the one and one-half months that Mrs. Johnson had sublet the room. He testified that Ms. Archer would come up from Atlanta to stay at

his home approximately every other weekend and that they shared his bedroom.

Later in the proceedings, appellant was called as a witness by Mrs. Johnson. He testified that after Mrs. Johnson had moved out of his home, he twice drove with her to Virginia, at Mrs. Johnson's request, to observe Mr. Johnson and a woman. On one trip to Virginia, he testified, Ms. Archer accompanied them.

In October, 1988, five months after testifying at the Johnsons' divorce hearing, appellant was charged in a criminal information with perjury. At the beginning of trial, the State introduced, without objection, the transcript of the divorce proceedings on May 19, 1988. The parties

stipulated:

> "if John Ferrell were in court that he would testify that this transcript was a stenographic recording, that he steno-graphically recorded the proceeding in the matter of Harry Theodore Johnson versus Dorothy Theresa Johnson, giving the number, etc. He certifies as to the page numbers, and would also testify that this is a true and accurate transcript to the best of his ability to render such a transcript."

The transcript recites that appellant was "duly sworn" before testifying.

The State then presented numerous witnesses who testified regarding contacts they had observed between appellant and Mrs. Johnson. For example, Neal Valiante, a dance teacher for the Charles County Parks and Recreation Department, testified that appellant and Mrs. Johnson attended his dance classes as partners. An attendance sheet introduced through Mr.

Valiante indicated that they were present for seven classes in February and March, 1988, several months prior to the Johnsons' divorce proceedings. Judith Welsh, the former assistant manager at the townhouse complex where appellant lived, testified that she saw appellant with a woman so frequently in early 1987 that she asked whether the woman's name ought to be added to his lease. She often saw a white Corvette parked in front of his townhouse. Mr. Johnson testified that his ex-wife drove a white Corvette. Carolyn Woodard, a sergeant with the Charles County Sheriff's Office, and James Higgs, an electrician, each testified regarding separate occasions -- one in March, 1987, the other in May of that year -- when they saw appellant and

Mrs. Johnson walking together holding hands. Finally, Bill Mitchell, Deputy Chief of the Maryland State Fire Marshal's Office, testified that he saw Mrs. Johnson drop off appellant at work, kissing him goodbye before driving away.

The State also adduced testimony demonstrating that appellant's account of his relationship with Felicity Archer McKenzie was less intimate than he described at the divorce proceedings. Ms. McKenzie, who married in December, 1986, testified that she and appellant ended their romantic relationship in June, 1985, when appellant moved from Georgia to Maryland. She denied ever having spent a weekend in appellant's townhouse, not to mention his bedroom. She also

denied ever having gone on an investigatory trip to Virginia with appellant and Mrs. Johnson. Finally, in contrast to appellant's testimony in the divorce proceedings, Ms. McKenzie testified that she never lived in Atlanta.

At the close of the State's evidence, appellant moved for judgment of acquittal:

> "We don't believe that the State has made any prima facie case as to the elements of perjury, [that] the witness testified in a wilful, deliberate, malicious, if you will, way, not based on any honest mistake or belief.
>
> We don't think the State has established that.
>
> We have a statement of a variety of people, including Miss Archer, who says that she was going with and discussing the matter with Mr. Wedlock at the time that he testified. That in the transcript he testified that he was going with her, he said

engaged to her. She testified that they had discussed marriage. As far as she was concerned it was off. But there was never any official communication between them that it was off.

He never told her that it was off. She never said anything to him. It was off from an official point of view.

So far as his contacts and occasions when he saw Mrs. Johnson, we have testimony that he was -- that the State fire people are aware that he was investigating an arson, which she was a suspect, and gathering information from her in connection with that."

The court denied the motion. Appellant presented no evidence.

The Court instructed the jury, in part:

"Also, I would instruct you that the rules of the Court in this jurisdiction require that witnesses testifying in our courts presenting evidence to be considered by triers of fact do so under oath.

The applicable rule says that

> whenever an oral oath is required by a rule of law, the person making oath shall solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the whole truth and nothing but the truth."

The jury found appellant guilty.

Appellant now complains to this Court that the trial court erred in denying his motion. He contends that the State failed to present sufficient evidence that appellant perjured himself while testifying under lawful oath.

In Smith v. State, 51 Md. App. 408, 419 (1982) we set forth the elements of perjury:

> "1. a lawful oath is administered;
>
> 2. in some judicial proceeding;
>
> 3. when a person swears wilfully, absolutely and falsely;
>
> 4. to a matter material to the

issue or point in question." Appellant contends that the State failed to establish the first element.

We reject appellant's argument for two reasons. First, we do not believe that appellant properly preserved this argument for appeal. In his motion for judgment of acquittal, appellant argued that the State failed to present evidence that appellant wilfully lied at the divorce proceedings. He focused on the third element of perjury, arguing this point specifically and extensively. He never mentioned the failure of the State to establish that he perjured himself <u>under a lawful oath</u>. While he did particularize reasons for his motion as required by Maryland Rule 4-324(a), he particularized the <u>wrong</u> reasons for

purposes of his argument on appeal.

His failure to preserve the argument for appeal notwithstanding, appellant's claim of evidentiary insufficiency is meritless. In determining whether the evidence was sufficient to sustain appellant's perjury conviction, our standard of review "is whether after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Blood v. State, 307 Md. 164, 167 (1986) (citing Jackson v. Virginia, 443 U.S. 307 Md. 164 (1979)); see also Sharp v. State, 78 Md. App. 320, 326 (1989). We have reviewed the evidence and have determined that the trial court properly denied appellant's motion.

Given that the parties stipulate at the commencement of trial that the court reporter, if present, would have testified as to the accuracy of the transcript of the divorce proceeding, that the transcript itself twice recites that appellant was duly sworn before testifying, and that the court instructed the jury regarding lawful oaths in courts of law, we find sufficient evidence to support the jury's conclusion that the State established the first element of perjury.

(2) Suppression of Evidence

Appellant next argues that the court erred in not granting his motion to suppress certain items of evidence, seized without a warrant from garbage left outside of his home for

collection. He argues that the seizure was in violation of the Forth Amendment, and, alternatively, that the Deputy Fire Marshal who gathered the evidence was acting outside the scope of his authority so that all of the evidence he seized should have been suppressed. We do not find in appellant's favor on either of these arguments, and so hold that the trial court properly denied appellant's motion to suppress.

Charles Dammann, the Deputy Fire Marshal who gathered the evidence form appellant's garbage, testified that on June 2 and 13, 1988, he went to appellants townhouse and removed green plastic trash bags that had been placed on the lawn next to the sidewalk. He stated that he went to appellant's

house on dates he knew were trash removal days, and that the "whole street was lined with trash. They are all placed almost uniformly in a row. The townhouse apartments are in a straight row and all of the trash was set up in identical locations between the apartments and the street." Dammann described the lawns between the houses and the walk as approximately eight to ten feet, the sidewalk edging the parking lot. He stated that the trash bags sat on the lawn adjacent to the sidewalk. Photographs of the scene taken by Dammann on March 28, 1988 substantiate his testimony.

Appellant testified in connection with the motion to suppress that after he put the trash out on June 2 and 13, 1988, he expected the trash would be

removed and did not intend to handle it again.

We are convinced by the evidence presented that the trial court properly denied appellant's motion to suppress. The Supreme Court's recent decision in California v. Greenwood, 486 U.S. ___, 108 S.Ct. 1625 (1988) is apposite. The Greenwood Court specifically rejected petitioner's privacy expectation in his garbage, reasoning:

> "It may well be that the respondents did not expect that the contents of their garbage bags would become known to the police or other members of the public. An expectation of privacy does not give rise to Fourth Amendment protection. however, unless society is prepared to accept that expectation as objectively reasonable.
>
> Here, we conclude that respondents exposed their garbage the public sufficiently to defeat their claim to Fourth Amendment protection. It is common

> knowledge that plastic garbage bags left on or at the side of public street are readily accessible to animals, children, scavengers, snoops, and other members of the public . . . Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage 'in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,' United States v. Reicherter, 647 F.2d 397, 399 (CA3 1981), respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded."

Id. at 1628-29 (footnotes omitted; citations omitted).

We find that once appellant deposited his garbage within reasonable proximity to the sidewalk for collection by the trash collector, he no longer had a reasonable expectation

of privacy in its contents. The items seized from the garbage were properly admitted.

Appellant also stated as grounds for his motion to suppress the evidence seized from his garbage that Deputy Fire Marshal Dammann acted outside the scope of authority vested in him by Maryland Annotated Code article 38A, § 8 (power and duties of fire marshal). While appellant correctly asserts that § 8 does not grant fire marshals the power to investigate perjury charges, he erroneously concludes that the evidence seized by the marshal must be excluded. Section 8 does not even remotely involve the exclusionary rule of evidence. Section 8 concerns only the power of the fire marshal for example, to enforce laws dealing with

fire and explosives, to inspect publicly-owned buildings for compliance with safety regulations, to investigate suspicious fires. There is nothing of constitutional dimension embodied implicitly or explicitly in the statue. See R. Gilbert & C. Moylan, Maryland Criminal Law: Practice and Procedure § 36.8 (1983 & 1988 Supp.) ("there is no exclusion of evidence for a violation of the State Constitution which is not a violation of the Federal Constitution, just as there is no exclusion of evidence, absent a specifically created Exclusionary Rule, for a violation of statute or violation of court order"); cf. Chu v. Anne Arundel County, 311 Md. 673 (1988) (article 27, § 55a is a statutory action for recovery, under certain

conditions, of property seized by the State; it is not in pari materia with the Fourth Amendment and does not represent an exclusionary rule of evidence). Thus, the court's denial of appellant's motion to suppress based on this alternative argument also was proper.

(3) Selective Prosecution

Appellant's last argument before us is that he has been singled out unconstitutionally for a perjury conviction, an offense, he states, "often committed but seldom prosecuted." Appellant did not raise this issue at trial. We therefore shall not to address it [sic]. See Md. Rule 8-131(a).

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.

Exhibit C.

BOBBY MITCHELL WEDLOCK IN THE

COURT OF APPEALS

v. OF MARYLAND

STATE OF MARYLAND Petition Docket No. 93 September Term, 1990 (No. 980, September Term, 1989 Court of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiorari and the answer filed thereto, to the Court of Special Appeals in the above entitled case it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: June 29, 1990